

**SENATE JOURNAL
61ST LEGISLATURE
TWENTY-SIXTH LEGISLATIVE DAY**

Helena, Montana
February 4, 2009

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Story presiding. Invocation by Pastor Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present, except Senators Gallus, Gillan, and Jent, excused. Quorum present.

Senator Gallus and Senator Gillan present.

BILLS AND JOURNALS:

2/4/2009

Correctly printed: **SB 83, SB 90, SB 102, SB 143, SB 185, SB 206, SB 208, SB 222, SB 224, SB 246, SB 261, SB 275, SB 343, SB 344, SB 345, SB 346, SB 347, SB 348, SB 349, SB 350, SB 351, SJR 3, SJR 19.**

Correctly engrossed: **SB 97, SB 107, SB 198, SB 201, SB 242, SB 255, SJR 16.**

Mr. President: We, your committee on Bills and Journal, having examined the daily journals for the twelfth, thirteenth, fourteenth, and fifteenth legislative days, find the same to be correct.

Senator Curtiss, Chair

REPORTS OF STANDING COMMITTEES

FISH AND GAME (Barkus, Chairman):

2/4/2009

SB 162, introduced bill, be amended as follows:

1. Page 2, line 4.

Following: "unless"

Insert: "the herd population in that district for that species falls below 50% of the objective level determined according to 87-1-323(1) or"

2. Page 2, line 5.

Strike: "an average of"

Strike: "3"

Strike: "calendar years"

Insert: "regular season"

And, as amended, do pass. Report adopted.

SB 228, introduced bill, be amended as follows:

1. Title, page 1, line 7 through line 8.

Following: "PERMITS" on line 7

Insert: "MAY BE"

Strike: "ARE GOOD UNTIL FILLED" on line 8

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2. Page 2, line 18 through line 19.

Strike: "A landowner" on line 18 through "filled." on line 19

And, as amended, do pass. Report adopted.

HIGHWAYS AND TRANSPORTATION (Brueggeman, Chairman):

2/4/2009

SB 268, do pass. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

2/3/2009

HB 197, introduced by Ebinger

HB 263, introduced by Smith

HB 264, introduced by Smith

HB 326, introduced by Mendenhall

HB 371, introduced by Cohenour

Senate bills concurred in and returned to the Senate:

2/3/2009

SB 7, introduced by Gebhardt

SB 10, introduced by Perry

SB 11, introduced by J. Peterson

MOTIONS

Senator Shockley moved **SB 348** be moved from the Judiciary committee to the State Administration committee.
Motion carried.

FIRST READING AND COMMITMENT OF BILLS

The following Senate bills were introduced, read first time, and referred to committees:

SB 352, introduced by Brueggeman, referred to Local Government.

SB 353, introduced by Black, referred to Taxation.

SB 354, introduced by Lewis, referred to Local Government.

SB 355, introduced by Moss, referred to Energy and Telecommunications.

SB 356, introduced by Zinke, referred to Business, Labor, and Economic Affairs.

SB 357, introduced by Moss, referred to Public Health, Welfare and Safety.

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

THIRD READING OF BILLS

Brueggeman excused.

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

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SB 90 passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

Total 48

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Brueggeman, Jent.

Total 2

SB 184 passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Juneau, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Zinke, Mr. President.

Total 45

Nays: Esp, Kaufmann, Keane, Windy Boy.

Total 4

Absent or not voting: None.

Total 0

Excused: Jent.

Total 1

Senator Brueggeman present.

SB 185 passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Mr. President.

Total 47

Nays: McGee, Zinke.

Total 2

Absent or not voting: None.

Total 0

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Excused: Jent.
Total 1

SB 197 passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.
Total 47

Nays: Esp, Stewart-Peregoy.
Total 2

Absent or not voting: None.
Total 0

Excused: Jent.
Total 1

SB 208 passed as follows:

Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Jackson, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke.
Total 41

Nays: Bales, Balyeat, Barkus, Esp, Essmann, Hinkle, Steinbeisser, Mr. President.
Total 8

Absent or not voting: None.
Total 0

Excused: Jent.
Total 1

SB 222 passed as follows:

Yeas: Black, Branae, Brenden, R. Brown, T. Brown, Cooney, Erickson, Gallus, Gillan, Hamlett, Hansen, Hawks, Jent, Juneau, Kaufmann, Keane, Larsen, Laslovich, Moss, Schmidt, Squires, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams, Windy Boy, Zinke.
Total 28

Nays: Bales, Balyeat, Barkus, Barrett, Brueggeman, Curtiss, Esp, Essmann, Gebhardt, Hinkle, Jackson, Laible, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Tutvedt, Mr. President.
Total 22

Paired: Jent, Aye; Essmann, No.

Absent or not voting: None.
Total 0

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Excused: None.
Total 0

SB 275 passed as follows:

Yeas: Barrett, Branae, R. Brown, T. Brown, Brueggeman, Cooney, Erickson, Essmann, Gallus, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jent, Juneau, Kaufmann, Keane, Larsen, Laslovich, Lewis, Moss, Murphy, Peterson, Schmidt, Shockley, Squires, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy.
Total 34

Nays: Bales, Balyeat, Barkus, Black, Brenden, Curtiss, Esp, Gebhardt, Jackson, Laible, McGee, Perry, Ripley, Steinbeisser, Zinke, Mr. President.
Total 16

Paired: Jent, Aye; Barkus, No.

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SJR 3 passed as follows:

Yeas: Bales, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.
Total 42

Nays: Balyeat, Esp, Hinkle, Jackson, McGee, Steinbeisser, Tutvedt.
Total 7

Absent or not voting: None.
Total 0

Excused: Jent.
Total 1

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Senator Peterson moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Tutvedt in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 237 - Senator Lewis moved **SB 237** do pass.

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Senator Peterson moved the committee rise, report progress, and beg leave to sit again. Motion carried.

Senator Peterson moved that the Senate recess and proceed to the House of Representatives for the Chief Justice's State of the Judiciary address. Upon adjournment of the joint session, the Senate will resume. Motion carried.

After the Senate was introduced in the House chambers, President Story assumed the chair. Senator Peterson moved that the body resolve itself into a joint session for the purpose of receiving the State of the Judiciary address from the Honorable Mike McGrath, Chief Justice of the Montana Supreme Court. Motion carried.

Senator Peterson moved that the President be authorized to appoint a committee of four to notify the Chief Justice that the House and Senate are in joint session and ready to receive the State of the Judiciary address. Motion carried.

President Story appointed Senator Perry, Senator Wanzenried, Representative Ingraham, and Representative Hollenbaugh, and the committee escorted the honored guests, Justices, and the Honorable Mike McGrath into the chambers. Chief Justice McGrath delivered the following address:

Mr. Speaker. Mr. President. Members of the Court. Honored Guests. Members of this Joint Assembly.

Thank you for giving me this opportunity. It is indeed an honor to be here speaking on behalf of Montana's Judiciary. It is very gracious of you, and appropriate I might add, to provide this opportunity to both the Executive and Judicial branches of Montana's government.

So what is so special about the Judiciary? What do these courts do?

The citizens of this state come to the courthouse when they are in crises:

The rancher who can't irrigate because of a water dispute;

The man injured through no fault of his own who cannot work and cannot pay his mortgage, buy groceries for his family, or pay his medical bills;

The defendant wrongfully accused;

The mother who needs child support to buy diapers and formula;

The victim of a crime seeking justice;

The father whose child is wrongfully being withheld from him;

The business owner who has put a second mortgage on her house to stay in business and is now being sued;

The child crying in the crib after being abused and neglected by a parent.

All of these people come to the court because their lives are in crisis and cannot resume until this crisis is resolved. And they come because they know they have rights. They know that there are laws that will protect them. They know that all they have to do is tell the judge their story and the crisis will be over. And they know they will be treated fairly, by an independent judge—not a person beholden to money interests or partisanship or social status. Rather a judge who will listen to their grievance and make a decision based on the merits of each individual case. Alexander Hamilton said that the "ordinary administration of criminal and civil justice . . . contributes more than any other circumstance" to the public support of a system of government.

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What our founders knew was that if this republic they had created was going to succeed, it had to be based upon the rule of law, and that rule of law requires an independent and impartial manner of resolving disputes—be they commercial matters, family crises, criminal charges or removal of public officers.

And the system works!

Ted Olson served as the U.S. Solicitor General in a Republican administration. His wife was killed on 9/11. Recently he wrote:

Every day, thousands and thousands of judges—jurists whose names we never hear, from our highest court to our most local tribunal—resolve controversies, render justice, and help keep the peace by providing a safe, reliable, efficient and honest dispute resolution process. The pay is modest, the work is frequently quite challenging, and the outcome often controversial. For every winner in these cases, there is a loser. Many disputes are close calls, and the judge's decision is bound to be unpopular with someone. But in this country we accept the decisions of judges, even when we disagree on the merits, because the process itself is vastly more important than any individual decision. Our courts are essential to an orderly, lawful society. And a robust and productive economy depends upon a consistent, predictable, evenhanded, and respected rule of law. . . . Americans understand that no system is perfect and no judge immune from error, but also that our society would crumble if we did not respect the judicial process.

So I thank you for recognizing the importance of the Judicial branch of our government and I thank you, again, for the opportunity to speak for the Judiciary.

Our legislative proposals this session are modest—but significant. By the way, the Judicial branch, the court system for all Montanans, spends less than 1% of the entire state's budget.

We hear a lot these days about access to justice. If citizens cannot get their cases heard; if businesses don't have a way to resolve commercial disputes quickly; if the middle class can no longer afford to hire an attorney; if the poor have no redress for grievances; or if the system has become so complicated that only specialized attorneys can navigate the complexities, then they all are being denied access to justice. Moreover, the old adage is true: justice delayed is justice denied.

Our budget proposes to add some judges in highly overcrowded courts in some of our growing communities.

We propose to reduce an extremely heavy workload at the Montana Supreme Court by bringing in a mediator to help settle cases that ought to be settled.

We propose to assist individual Montana citizens with court service areas, places where you can get proper forms and assistance with the court process without unnecessary expense. Not all legal matters need attorneys. There are many ways we can simplify the process and provide people with helpful solutions.

Now we recognize that with judicial independence comes the corresponding responsibility, to be accountable:

Accountable to the people we serve;

Accountable to the Legislature, especially as to how we spend public funds; and

Accountable to the rule of law by virtue of the responsibilities we have to our Constitution and Montana statute.

In an effort to be more accountable, the Judicial branch has undertaken a series of performance measures. At the Supreme Court, a number of case processing measures have been identified.

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The Court is very much aware of concerns about backlogged cases. Significant improvements have been made in the last few months, and now only a few cases have been sitting for more than a year. We hope to adopt other efficiencies in the near future, while at the same time upholding our duty to the litigants to do a quality job.

In the District Courts, performance standards are now being developed. Surveys of court users are completed and formulas have been adopted to accurately measure case loads and case timeliness.

Finally, let me say that there are a number of things we, the Judiciary, can do to prevent future expenditures of precious state funds.

Drug courts and Treatment courts in general can and do save taxpayer dollars. And last session, Legislators had the foresight to fund this program for the first time.

Two years ago 50% of the children in foster care were there because of their parents' use of drugs—methamphetamine in particular.

An incredibly high percentage—up to 90%—of prison inmates (both male and female) are incarcerated with chemical dependency problems—as many as half, or more, for meth. And, of course, many of our prisoners have severe mental illness problems.

All of these social problems cause a tremendous drain on state and local government budgets. Treatment courts divert some of these people to less expensive and more effective alternatives. They can keep kids out of Pine Hills or even more expensive out-of-state placements.

Treating mental illness in a community can prevent tragedies like the recent episode in Glasgow.

Drug courts do reunite shattered families.

Recently I attended a graduation ceremony at a family Drug court in Butte. One young woman had six children, all now out of foster care. She had a job and was a productive member of society and back together with her kids. Many of our judges in Montana are committed to addressing these problems in their communities—problems they see every day. Treatment courts are a strain on judges' time and energy. However, they are very rewarding as well. They do see good things happen in a courtroom—not a common occurrence in our courts.

Nationally, it has been proven that Treatment courts are by far the most effective thing we can do to address drug abuse and the problems that go with it. And thanks to you, last session, for providing some funding for these important programs. I hope they will be able to continue.

We believe our proposals will help to ensure that the small business owner, the man injured through no fault of his own, the mom, the defendant wrongly accused, and the child crying in the crib get their opportunity to resolve their crises.

While I have been Chief Justice for only a short period of time, I have enjoyed the experience immensely. I thank the people of Montana for giving me this opportunity.

Thank you again for inviting me to speak with you today.

I know all of you have a lot to do in the next 64 days!

Good luck this Session!

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Upon adjournment of the joint session, the Senate reconvened.

Roll Call. All members present except Senator Jent, excused. Quorum present.

Senator Peterson moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Tutvedt in the chair.

Motion that **SB 237** do pass carried as follows:

Yeas: Balyeat, Branae, R. Brown, T. Brown, Brueggeman, Cooney, Erickson, Gillan, Hamlett, Hansen, Hawks, Jackson, Juneau, Kaufmann, Laible, Larsen, Laslovich, Lewis, Moss, Schmidt, Squires, J. Tropila, M. Tropila, Wanzenried, Williams.

Total 25

Nays: Bales, Barkus, Barrett, Black, Brenden, Curtiss, Esp, Essmann, Gallus, Gebhardt, Hinkle, Keane, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Stewart-Peregoy, Tutvedt, Windy Boy, Zinke, Mr. President.

Total 24

Absent or not voting: None.

Total 0

Excused: Jent.

Total 1

Senator Peterson moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Story in the chair. Chairman Tutvedt moved the Committee of the Whole report be adopted. Motion carried as follows:

Yeas: Branae, R. Brown, T. Brown, Brueggeman, Cooney, Erickson, Essmann, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Juneau, Kaufmann, Laible, Larsen, Laslovich, Lewis, Moss, Peterson, Ripley, Schmidt, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Zinke, Mr. President.

Total 32

Nays: Bales, Balyeat, Barkus, Barrett, Black, Brenden, Curtiss, Esp, Gallus, Hinkle, Jackson, Keane, McGee, Murphy, Perry, Shockley, Windy Boy.

Total 17

Absent or not voting: None.

Total 0

Excused: Jent.

Total 1

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Majority Leader Peterson moved that the Senate adjourn until 1:00 p.m., Thursday, February 5, 2009. Motion carried.

Senate adjourned at 3:04 p.m.

MARILYN MILLER
Secretary of the Senate

ROBERT STORY
President of the Senate